

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FERDINAND REYNOLDS,)	
)	2:95-cv-1451-GEB-DAD
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
THEODORE WHITE, Warden; IVALEE)	
HENRY; and STANLEY WANG,)	
)	
Defendants.)	
_____)	

On November 29, 2006, the Ninth Circuit remanded this action for an evidentiary hearing "on the issue of whether [Plaintiff Ferdinand Reynolds ("Reynolds")] conditioned his waiver of a jury trial on a bench trial before the magistrate judge." (Order, Nov. 29, 2006, at 2.) The April 14, 2004 Order remanding the action stated:

[B]ecause an attorney cannot waive the client's right to a jury trial without the client's consent, and such consent can be conditioned (such as on trial by a magistrate judge rather than a district judge), Reynolds' assertion that his consent was so conditioned, his contemporaneous letter to the district judge mentioning a magistrate trial, and the trial judge's refusal to allow him to address the court, raise a factual

1 issue whether there was actual consent to the
2 waiver of Reynolds' right to a jury trial.¹

3 An evidentiary hearing was held on August 6, 2007, and an
4 order issued on August 14, 2007 finding that Reynolds's waiver of a
5 jury trial was not conditioned on a bench trial being held before the
6 magistrate judge.

7 Reynolds moves for reconsideration of the August 14 Order
8 and requests that a new evidentiary hearing be scheduled. Attached to
9 Reynolds's motion is a March 16, 2001 letter from Plaintiff's trial
10 attorney James J. Falcone ("Falcone") to Plaintiff, in which Falcone
11 states: "When we spoke after the trial we discussed the
12 misunderstanding concerning having a jury trial with [Judge] Burrell
13 or a bench trial with [Magistrate Judge] Drozd." Reynolds argues that
14 counsel should have been appointed to assist him at the August 6
15 evidentiary hearing, and that said counsel "could have successfully
16 presented and argued during the hearing [that Falcone] admitted in
17 writing . . . that [Reynolds] bugged him during the entire course of
18 [the] bench trial about why [Reynolds's] case wasn't being heard
19 before a jury or before Judge Drozd."² Reynolds contends the "letter
20 was not presented during the [August 6, 2007] evidentiary hearing by
21 [Reynolds] based on his lack of legal skills and battle with Bipolar

22 ¹ Other than Reynolds's motion for a new trial filed March 19,
23 2001, the court is unaware of a "contemporaneous letter to the district
24 judge mentioning a magistrate trial" or any other communication between
25 Reynolds and/or his then attorney and the court on this issue besides
26 Reynolds's then attorney's unconditional stipulation to waive a jury
27 trial.

28 ² The undersigned district judge referenced to the assigned
magistrate judge "[t]he matter of trying to find a lawyer for the
limited purpose of representing Reynolds at the evidentiary hearing."
(Dec. 18, 2006 Order at 2.) Although numerous attempts were made, no
lawyer could be found.

1 disorder." These reasons have not been shown sufficient to excuse
2 Reynolds's failure to have presented this letter at the August 6
3 evidentiary hearing. Reynolds certainly showed sufficient skill to
4 present the letter following the hearing and nothing about Reynolds's
5 demeanor during the hearing indicated he suffered from any mental
6 illness. Further, the letter does not support Reynolds's contention
7 that the misunderstanding between him and Falcone existed during the
8 trial. The letter references a "misunderstanding" that Reynolds and
9 Falcone discussed "after trial."

10 The August 14 Order found that Reynolds's testimony at the
11 August 6 hearing "was contradicted by Falcone's testimony, by the
12 excerpt of the trial proceeding during which Reynolds contends he
13 tried to tell Judge Burrell about his conditional waiver of a jury,
14 and by Reynolds's own statements during the August 6 evidentiary
15 hearing where he failed to explain why he did not tell Judge Burrell
16 about the alleged conditional waiver." The August 14 Order stated:

17 [T]he partial trial transcript evidences that when
18 Reynolds tried to speak to Judge Burrell at trial,
19 it was when Falcone was making an argument against
20 Defendants' motion under Rule 50(a) of the Federal
21 Rules of Civil Procedure. Reynolds argued at the
22 August 6 hearing that he did try to get Falcone to
23 tell Judge Burrell about the conditional waiver,
but Falcone did not respond. When Reynolds was
asked at the evidentiary hearing why he did not
ask Falcone a second time to tell Judge Burrell
about the waiver, Reynolds stated that he was too
depressed to say anything again because of his
bipolar disorder. His testimony is disbelieved.

24 Because Reynolds still has not shown why he did not tell Judge Burrell
25 about the alleged conditional waiver and/or why he did not ask Falcone
26 a second time to tell Judge Burrell about the waiver, and since
27 Reynolds has not shown that he was entitled to have counsel appointed
28 to represent him at the evidentiary hearing or that the outcome of the

1 evidentiary hearing would have been different had counsel been
2 appointed, Reynolds's motion for reconsideration is denied.³

3 IT IS SO ORDERED.

4 Dated: November 19, 2007


5 GARLAND E. BURRELL, JR.
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ³ The court's questioning regarding why Reynolds did not ask
28 Falcone a second time to tell the court about the waiver does not
constitute a finding that Reynolds asked Falcone a *first* time to tell
the court about the waiver.